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OFFICE OF PETITIONS

In re Application of :
Andrew Dames et al :
Application No. 09/787,195 : **DECISION ON PETITION**
Filed: April 17, 2001 :
Attorney Docket No. P07109US00 :

This is a decision on the petition under 37 CFR 1.181(a), filed April 4, 2007, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of April 26, 2006, which set a three (3) month shortened statutory period for reply. A reply was due on or before July 26, 2006. A Notice of Abandonment was mailed on March 16, 2007.

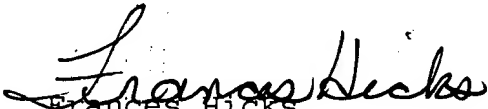
Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard, which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on July 20, 2006 of an "RCE Transmittal Form" and a credit card authorizing payment of a fee of \$595 (\$395 for the RCE and \$200 for the request to suspend, which fee is actually \$130). A copy of the previously submitted reply accompanies the petition.

The RCE acknowledged as having been received in the USPTO on July 20, 2006 is not of record in the application file and has not to date been located. However, MPEP 503 provides that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the RCE was timely received in the USPTO but lost after receipt thereof. The fact that the RCE was timely received is also supported by Office finance records which show receipt of the \$395 RCE filing fee, as well as a \$200 fee for the request to suspend under 37 CFR 1.103(c).

In view of the above, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The copy of the reply supplied with the petition will be accepted in place of the reply acknowledged as having been received by the USPTO on July 20, 2006.

This application is being referred to Technology Center AU 1743 for processing the RCE and for appropriate action in the normal course of business as the nature of the case requires.


Frances Hicks
Petitions Examiner
Office of Petitions